

***De minimis* Rules Guidelines** – as modified on 3/20/14
(§ 734.4 and Supplement No. 2 to part 734 of the EAR)

- IF ...
 - Foreign-made commodity incorporates controlled U.S.-origin commodities
 - Foreign-made commodity is 'bundled' with controlled U.S.-origin software,
 - Foreign-made software is commingled with controlled U.S.-origin software, or
 - Foreign-made technology is commingled with controlled U.S.-origin technology,
- THEN... the Foreign-made item is subject to the EAR if the U.S.-origin controlled content exceeds:
 - “600 series” .a - .x items: 0% to Country Group D:5, 25% to all other destinations.
 - “600 series” .y items: 0% to China or Country Group E:1, unlimited to all other destinations.
 - Non-“600 series” items: 10 % to Country Group E:1, 25% to all other destinations.
 - Non-“600 series” AT only: 10% to Country Group E:1, unlimited to all other destinations.
 - EAR99: 10 % to Cuba, N. Korea and Syria (except food and medicines), unlimited to all other destinations.
- **“Controlled content”** = US-origin items that require a license to the ultimate destination of the foreign product.
- EAR99 items are considered “controlled content” for certain sanctioned countries.
- Fair Market Value of the “controlled content” is needed to calculate *de minimis* percentage
- **Content that you don’t have to count:**
 - ☐ License Exception GBS or items that do not require a license to the ultimate destination of the foreign product (NLR designated items).
- **Content that is not eligible for *de minimis* treatment**
 - U.S.-origin “600 series” content when the foreign-made items are destined to Country Group D:5 of Supp. No. 1 to Part 740.
 - Certain 9E003 technology
 - Certain U.S. origin components of high performance computers
 - Encryption 5E002, and encryption commodities and software that don't meet the eligibility criteria in § 734.4(b)
 - QRS 11 if in commercial standby instrument system or commercial aircraft w/such system
 - Foreign made military commodities that incorporate cameras classified under ECCN 6A003.b.4.b
- **U.S. items are 'incorporated' when all of the following conditions are met:**
 - They are essential to the functioning of the foreign equipment,
 - They are customarily included in the sale of foreign-made items, and
 - They are reexported with the foreign produced item.
- **Bundling**
 - Software that is configured for a specific commodity, but is not necessarily physically integrated into the commodity.
 - ☐ Example: For instance, printer driver software is generally not incorporated into a printer but is customarily delivered with the printer so that it may be loaded onto the computer to which it will be connected.
 - Eligible software is software that is listed on the Commerce Control List (CCL) and is controlled for anti-terrorism (AT) reasons or software that is designated EAR99 (subject to the EAR, but not listed on the CCL).
- **One-time report required for technology**
 - Percentage of U.S. content by value
 - Description of your calculations
 - Values, assumptions, methodologies
 - Export price of U.S. content
 - Description and fair market value of the foreign technology
- **If over the *de minimis* limit ...**
 - Classify the foreign product (self-classification vs BIS classification)
 - Determine License Requirements
 - Determine License Exception eligibility
 - Obtain any necessary authorization